

## CCRB INVESTIGATIVE RECOMMENDATION

|   |   |                           |  |                                    |                                 |
|---|---|---------------------------|--|------------------------------------|---------------------------------|
| Investigator:<br>Haeley Galeote   | Team:<br>Squad #14  | CCRB Case #:<br>202202350 | <input type="checkbox"/> Force                         | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|   |   |                           | <input checked="" type="checkbox"/> Abuse              | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Friday, 03/25/2022 1:00 PM, Monday,<br>03/28/2022 8:00 PM, Saturday, 04/02/2022<br>11:42 AM | Location of Incident:<br>under the Gowanus Expressway (18th<br>Street and 3rd Avenue), over the phone | Precinct:<br>72           | 18 Mo. SOL<br>9/25/2023                                | EO SOL<br>9/25/2023                |                                 |
| Date/Time CV Reported<br>Tue, 04/05/2022 7:40 AM  | CV Reported At:<br>IAB  | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Tue, 04/12/2022 11:01 AM |                                    |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |

| Subject Officer(s)   | Shield | TaxID  | Command |
|----------------------|--------|--------|---------|
| 1. PO Anne Charles   | 00212  | 965977 | 072 PCT |
| 2. PO Antonio Meyers | 08696  | 966715 | 072 PCT |
| 3. PO Eric Kmiotek   | 26509  | 952940 | 072 PCT |

| Witness Officer(s)  | Shield No | Tax No | Cmd Name |
|---------------------|-----------|--------|----------|
| 1. PO Xavier Proano | 20743     | 968074 | 072 PCT  |

| Officer(s)           | Allegation   | Investigator Recommendation |
|----------------------|--|-----------------------------|
| A. PO Anne Charles   | Abuse: On March 25, 2022, at 18th Street and 3rd Avenue in Brooklyn, Police Officer Anne Charles seized § 87(2)(b) property.       |                             |
| B. PO Eric Kmiotek   | Abuse: On March 25, 2022, at 18th Street and 3rd Avenue in Brooklyn, Police Officer Eric Kmiotek seized § 87(2)(b) property.       |                             |
| C. PO Antonio Meyers | Abuse: On March 28, 2022, at 18th Street and 3rd Avenue in Brooklyn, Police Officer Antonio Meyers threatened to arrest § 87(2)(b) |                             |
| D. PO Antonio Meyers | Abuse: On April 2, 2022, via text message, Police Officer Antonio Meyers refused to provide his name to § 87(2)(b)                 |                             |

### Case Summary

On April 5, 2022, § 87(2)(b) filed this complaint via phone with IAB. § 87(2)(b) complaint was received at the CCRB on April 12, 2022.

On March 25, 2022, at approximately 2:00 p.m., in the vicinity of 18<sup>th</sup> Street and 3<sup>rd</sup> Avenue in Brooklyn, § 87(2)(b) 2006 black Dodge Caravan, which contained his dog, was towed at the request of Police Officer Anne Charles and Police Officer Eric Kmiotek, both of the 72<sup>nd</sup> Precinct (**Allegation A-B: Abuse of Authority**, § 87(2)(g)).

On March 28, 2022, at approximately 7:12 p.m., § 87(2)(b) called 911 to report his missing vehicle and dog in the vicinity of 18<sup>th</sup> Street and 3<sup>rd</sup> Avenue in Brooklyn. Police Officer Antonio Meyers and Police Officer Xavier Proano, both from the 72<sup>nd</sup> Precinct, arrived on scene and Police Officer Antonio Meyers threatened to arrest § 87(2)(b) for animal cruelty (**Allegation C: Abuse of Authority**, § 87(2)(g)).

On April 2, 2022, at approximately 11:42 a.m., § 87(2)(b) texted PO Meyers and requested his name, but PO Meyers never provided it (**Allegation D: Abuse of Authority**, § 87(2)(g)). No arrests or summonses resulted from these incidents.

The investigation did not receive any BWC footage as the nature of the incident did not require the use of BWC as per the Patrol Guide (**BR 17**).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: On March 25, 2022, at 18th Street and 3rd Avenue in Brooklyn, Police Officer Anne Charles seized § 87(2)(b) property.**

**Allegation (B) Abuse of Authority: On March 25, 2022, at 18th Street and 3rd Avenue in Brooklyn, Police Officer Eric Kmiotek seized § 87(2)(b) property.**

§ 87(2)(b) testified (**BR 02, 07**) that at the time of the incident, he returned from work and went under the Gowanus Expressway near 18<sup>th</sup> Street and 3<sup>rd</sup> Avenue to his black Dodge Caravan, where he had parked it with his dog inside. § 87(2)(b) vehicle was not there, and he believed his vehicle may have been towed as he was able to see drag marks in the dirt. § 87(2)(b) Dodge Caravan was under the Gowanus Bridge for a few months due to its dead battery and § 87(2)(b) believed it may have been towed because he switched its license plate with that of a Nissan Sentra he also owned.

PO Charles testified (**BR 03**) that she and her partner PO Kmiotek were performing rotation tow under the Gowanus Bridge on 3<sup>rd</sup> Avenue. PO Charles and PO Kmiotek had received multiple 311 and community complaints regarding abandoned vehicles and illegal parking under the Gowanus Bridge. As part of their rotation tow duties, PO Charles and PO Kmiotek kept a look out for vehicles that seemed abandoned and needed to be towed. The officers saw § 87(2)(b) Dodge Caravan under the Gowanus Bridge, and PO Charles believed the vehicle was abandoned as the vehicle was dusty and appeared to have animal feces outside of it. PO Charles ran the license plate and vin number, which both came back to a 2006 Nissan Sentra. PO Charles called Atlantic Auto Spa to tow the vehicle due to the vehicle being abandoned and for having a license plate and VIN number that was coming back to a Nissan Sentra rather than a Dodge Caravan. PO Charles and PO Kmiotek never inspected the vehicle, nor opened it, nor heard any sound come from it; thus, they never discovered a dog within it. PO Charles later learned of § 87(2)(b) dog being in the vehicle, days after the incident, through an employee from the tow company.

PO Kmiotek was not interviewed as the investigation was able to reach a preponderance of the evidence from PO Charles' testimony alone.

The property voucher for § 87(2)(b) vehicle (**BR 08**), stated that § 87(2)(b) vehicle was dented, scratched, had dust, and contained feces. The property voucher also states the plate number did not come back to the Dodge Caravan, and the VIN number came back to a 2006 Nissan Sentra.

Patrol Guide Procedure 218-21 (**BR 09**) states the purpose of rotation tow is to process non-evidence stolen or apparently abandoned vehicles. An apparently abandoned vehicle is defined as "an unoccupied vehicle observed under circumstances indicating it may have been stolen, but for

which no alarm has been transmitted.” After the vehicle is determined to be abandoned and all proper documentation of its information is completed, the tow operator is notified to recover the vehicle.

While § 87(2)(b) did not consider his vehicle abandoned under the expressway, as established by PO Charles and the property voucher for the vehicle, the state of § 87(2)(b) vehicle, it being dusty, scratched, and having feces outside of it, could reasonably be interpreted as conditions associated with an abandoned vehicle. Furthermore, § 87(2)(b) acknowledged that he left his vehicle parked underneath the Gowanus Bridge for “a few months” due to his dead battery.

§ 87(2)(g)

**Allegation (C) Abuse of Authority: On March 28, 2022, at 18th Street and 3rd Avenue in Brooklyn, Police Officer Antonio Meyers threatened to arrest § 87(2)(b)**

§ 87(2)(b) testified (BR 02) that his dog had been in his Dodge Caravan on March 25, 2022, for around twelve to fourteen hours, which was normal for his dog, a German Shepherd who could withstand cold weather. § 87(2)(b) did not call the police to inquire about his dog and the vehicle until March 28, 2022, as he believed the bank had possession of the vehicle. § 87(2)(b) called 911 on March 28, 2022, and PO Meyers and PO Proano responded to the call. PO Meyers asked § 87(2)(b) if he had anything in the vehicle, to which § 87(2)(b) stated his dog had been in an open crate in the vehicle. PO Meyers stated to § 87(2)(b) “It’s 28 degrees out here you think your dog wants to be out in this weather. I can arrest you for animal cruelty.” § 87(2)(b) did not respond to PO Meyer’s statement.

PO Meyers testified (BR 04) that when he asked § 87(2)(b) if there was anything of value in his vehicle, § 87(2)(b) first responded by saying no. PO Meyers then asked § 87(2)(b) if he had a dog in the vehicle, and § 87(2)(b) stated he did. PO Meyers asked § 87(2)(b) when he left the vehicle, to which § 87(2)(b) stated he left it Friday, March 25, 2022, or the day before. PO Meyers told § 87(2)(b) that they had the coldest days of the year the past few days and that leaving his dog inside his vehicle without heat during this time was inhumane. PO Meyers then proceeded to explain to § 87(2)(b) that this was an arrestable offense, stating, “You abandoned the dog, you could be arrested for that.” § 87(2)(b) shook his head and stated he did not mean it.

Article 26 of New York State Agriculture and Markets Law, Section 353-D (BR 10) states that “a person shall not confine a companion animal in a motor vehicle in extreme heat or cold without proper ventilation or other protection from such extreme temperatures where such confinement places the companion animal in imminent danger of death or serious physical injury due to exposure to such extreme heat or cold.”

Given that § 87(2)(b) acknowledged leaving his dog inside of his vehicle for approximately 12 hours, the investigation determined that § 87(2)(b) was in violation of New York State Agriculture and Market Law. Specifically, § 87(2)(b) left his dog confined in a motor vehicle in cold weather without proper protection from such weather, thereby placing his dog at risk of death or serious injury due to exposure § 87(2)(g)

**Allegation (D) Abuse of Authority: On April 2, 2022, via text message, Police Officer Antonio Meyers refused to provide his name to § 87(2)(b)**

It is undisputed that § 87(2)(b) requested PO Meyers name via text message.

§ 87(2)(b) testified (BR 02) that on April 2, 2022, he sent a text to PO Meyers requesting his name, but § 87(2)(b) never received a response. § 87(2)(b) stated that on April 4, 2022, he went to the 72<sup>nd</sup> Precinct to get information about his dog and saw PO Meyers there. § 87(2)(b) asked

PO Meyers for his name and PO Meyers gave it to him. This was the first time § 87(2)(b) had received PO Meyers name.

PO Meyers testified (BR 04) that he received a text from § 87(2)(b) on his departmental cell phone on April 3, 2022, but noted that he gave § 87(2)(b) his business card during their interaction on March 28. § 87(2)(b) also came to the 72<sup>nd</sup> Precinct stationhouse prior to the text message and PO Meyers told § 87(2)(b) his name and specifically stated, “You don’t remember me? I’m Police Officer Meyers.” PO Meyers also noted that on April 2, 2022, he was not working, and thus had no knowledge of whether he was required to text his name to § 87(2)(b) at the start of his following tour on April 3, 2022.

Screenshots provided by § 87(2)(b) contained in IA#18 (BR 13), showed text messages exchanged between § 87(2)(b) and PO Meyers, who is under the name “Police Officer Maddox,” Maddox being § 87(2)(b) dog. On April 2, 2022, at 11:42 a.m., § 87(2)(b) sent a message to PO Meyers stating, “Hello what is your name.”

Screenshots provided by PO Meyers, contained in IA#111 (BR 12), showed text messages PO Meyers exchanged with § 87(2)(b). PO Meyers received a text from § 87(2)(b) which states, “Hello what is your name.” The received date was blurred due to image quality but appears to say April 3, 2022. There was no response to the message.

PO Meyers memo book (BR 14) showed that he was off duty on April 2, 2022.

Patrol Guide Procedure 203-09 (BR 18) states that a member of service must courteously and clearly state their name, or otherwise provide it, to anyone who requests it.

Both § 87(2)(b) and PO Meyers acknowledged that § 87(2)(b) requested PO Meyers name via text message. As PO Meyers was off on April 2, 2022, he was under no obligation to respond to § 87(2)(b). However, upon beginning in his tour on April 3, 2022, PO Meyers should have responded to § 87(2)(b) request for his name as the communication took place on PO Meyer’s department cell phone. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

#### Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (BR 05).
- PO Meyers has been a member of service for three years and has been a subject in one complaint and one allegation, none of which were substantiated. § 87(2)(g)
- PO Charles has been a member of service for three years and has been a subject in two complaints and two allegations, none of which were substantiated. § 87(2)(g)
- PO Kmiotek has been a member of service for nine years and has been a subject in one complaint and two allegations, of which none were substantiated. § 87(2)(g)

#### Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of June 27, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (BR 06).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad: 14

|               |                                    |   |                           |
|---------------|------------------------------------|---|---------------------------|
| Investigator: | <u>Haeley Galeote</u><br>Signature | <u>Inv. Galeote</u><br>Print Title & Name | <u>05/12/2023</u><br>Date |
|---------------|------------------------------------|---|---------------------------|

|               |                                      |  |                           |
|---------------|--------------------------------------|--|---------------------------|
| Squad Leader: | <u>Cassandra Fenkel</u><br>Signature | <u>IM Cassandra Fenkel</u><br>Print Title & Name | <u>05/12/2023</u><br>Date |
|---------------|--------------------------------------|--|---------------------------|

|           |                      |                               |                 |
|-----------|----------------------|-------------------------------|-----------------|
| Reviewer: | <u></u><br>Signature | <u></u><br>Print Title & Name | <u></u><br>Date |
|-----------|----------------------|-------------------------------|-----------------|